

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jenzo Duque	Team: APU	CCRB Case #: 201806447	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/08/2018 9:38 AM	Location of Incident: In front of Bagel Pub located at 775 Franklin Avenue	Precinct: 77	18 Mo. SOL 2/8/2020	EO SOL 2/8/2020	
Date/Time CV Reported Wed, 08/08/2018 9:47 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 08/08/2018 9:47 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jose Vanderpool	08021	942643	077 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Christophe Messina	01448	961950	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jose Vanderpool	Force: Jose Vanderpool used physical force against § 87(2)(b)	

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via the Intake Hotline on August 8, 2018.

On August 8, 2018, at approximately 9:38 a.m., in front of the Bagel Pub located at 775 Franklin Avenue in Brooklyn, Police Officer Jose Vanderpool, of the 77th Precinct, apprehended § 87(2)(b) after observing her harassing patrons inside the Bagel Pub. After handcuffing § 87(2)(b), PO Vanderpool placed § 87(2)(b) into the rear of a police vehicle to contain her while waiting for emergency medical services to remove § 87(2)(b) to the hospital. § 87(2)(b) sat down inside the vehicle and kicked twice at PO Vanderpool. PO Vanderpool then punched § 87(2)(b) in the face one time in response (**Allegation A: Force**, § 87(2)(g)).

There was no video footage available for this incident. No arrest was made or summons was issued during this incident.

Findings and Recommendations

Allegation (A) Force: Police Officer Jose Vanderpool used physical force against § 87(2)(b)

It is undisputed that on August 8, 2018, at approximately 9:38 a.m., in front of the Bagel Pub located at 775 Franklin Avenue in Brooklyn, § 87(2)(b) who was already rear handcuffed, kicked at PO Vanderpool as he placed her in the back seat of a police vehicle. PO Vanderpool then punched § 87(2)(b) in the face once with his right hand.

§ 87(2)(b) who was a bystander to this incident and did not know of or have any relationship to § 87(2)(b) stated that PO Vanderpool and PO Messina escorted § 87(2)(b) out of the location by holding onto her arms, shoulder, and body (Board Review 01). PO Vanderpool stood on § 87(2)(b)'s left and restrained that side of her while PO Messina stood on § 87(2)(b)'s right and restrained her in a similar fashion. § 87(2)(b) did not move her hands or arms because the officers were restraining her. § 87(2)(b) oriented herself towards the location behind them, but continued to move towards the vehicle, as the officers held her firmly. § 87(2)(b) was not in handcuffs at that point in time. When the group approached the vehicle, one of the officers rear handcuffed § 87(2)(b) but § 87(2)(b) did not see which officer did so.

One of the officers opened the rear passenger door and then placed § 87(2)(b) in the rear passenger seat. PO Vanderpool stood closest to the open passenger door while PO Messina stood closer to the trunk of the vehicle. § 87(2)(b) sat in a position such that her legs were extended towards the officers and the open passenger door. Neither officer made physical contact with § 87(2)(b) at that point in time. § 87(2)(b) then kicked her legs towards the officers twice. § 87(2)(b) could not see whether § 87(2)(b)'s kicks connected because the open passenger door partially obscured her view. Upon further questioning, § 87(2)(b) clarified she then changed her vantage point so that she could see what happened between the officers and § 87(2)(b) more clearly. § 87(2)(b) did not observe § 87(2)(b) make any movement towards the officers prior to kicking at them; however, § 87(2)(b) acknowledged that she did not witness what happened prior to her arrival on scene. After § 87(2)(b) kicked at the officers, both officers backed away from her. PO Vanderpool then punched § 87(2)(b) once in her face. PO Vanderpool did not issue any commands to § 87(2)(b) prior to striking her. § 87(2)(b) did not know how § 87(2)(b) responded to the strike, but she believed her to have lost consciousness, as § 87(2)(b) made no statements. The officers then closed the passenger door.

§ 87(2)(b) could not be reached to provide statements regarding this incident. As such, the investigation did not have access to her medical and mental history, could not ask her about what happened during and after her apprehension, and therefore could not assess her removal to the hospital.

In PO Vanderpool's statement to the CCRB (Board Review 02), PO Vanderpool and PO Messina responded to a radio call of harassment. The radio call included descriptions of two individuals: male and female, dark-skinned, with bleach-blond hair. PO Vanderpool did not recall if additional information was provided regarding the harassment call. PO Vanderpool parked his police vehicle in front of a deli located at 624 St. John's Place. The deli owner exited the location and told PO Vanderpool that a couple had been harassing customers, while also providing a similar description of this couple as that of the radio call. The deli owner directed the officers down the street to a coffee shop at 764 Franklin Avenue. Staff at the coffee shop told PO Vanderpool the same information: a couple had been harassing customers and a consistent description. Staff also stated the couple had become violent and harassed customers at the location in the past. Staff directed the officers to the Bagel Pub at 775 Franklin Avenue across the street.

At that point in time, PO Vanderpool realized he was familiar with the two individuals, § 87(2)(b) and § 87(2)(b). PO Vanderpool had responded to prior disputes between § 87(2)(b) and § 87(2)(b). § 87(2)(b) has a history of not cooperating with officers and being removed to the hospital. PO Vanderpool did not know specifically if § 87(2)(b) has been charged with assaulting officers or emergency staff in the past. Neither § 87(2)(b) nor § 87(2)(b) has physically attacked PO Vanderpool on any prior occasion. PO Vanderpool estimated he had responded to incidents involving § 87(2)(b) and § 87(2)(b) at least five times. PO Vanderpool had not interacted with § 87(2)(b) or § 87(2)(b) in at least one year, because his assignment had changed and they were not often in his patrol sector. Upon realizing he was familiar with the individuals involved in the call, PO Vanderpool became concerned that § 87(2)(b) would be intoxicated, aggressive, and not medicated.

The officers went across the street to the Bagel Pub, where they observed § 87(2)(b) and § 87(2)(b) asking customers for money and food. PO Vanderpool spoke with § 87(2)(b) and § 87(2)(b) and commanded that they leave the location. § 87(2)(b) began directing § 87(2)(b) out of the store, and § 87(2)(b) then approached PO Vanderpool. § 87(2)(b) put her flat palm in PO Vanderpool's face and directed profanity at him. § 87(2)(b) restrained § 87(2)(b) by standing in between her and PO Vanderpool, grabbing her arms and torso, and pulling her away. § 87(2)(b) and § 87(2)(b) then left the location. The officers entered their vehicle and observed § 87(2)(b) and § 87(2)(b) walking into a deli located at 801 Franklin Avenue. PO Vanderpool parked the vehicle outside this deli. The owner of the deli exited and asked PO Vanderpool to make § 87(2)(b) and § 87(2)(b) leave. PO Vanderpool entered the deli and told § 87(2)(b) and § 87(2)(b) to leave. § 87(2)(b) and § 87(2)(b) complied, though § 87(2)(b) continued screaming and directing profanity at PO Vanderpool.

PO Vanderpool entered his police vehicle and observed § 87(2)(b) and § 87(2)(b) walk towards the Bagel Pub once more. PO Vanderpool drove around the block and then parked in front of the Bagel Pub on Franklin Avenue. Through the windows of the Bagel Pub, PO Vanderpool observed § 87(2)(b) approaching a male individual and screaming at him while using profanity. The individual grabbed § 87(2)(b) by both her arms, lifted her feet off the ground, and then carried her outside the Bagel Pub. PO Vanderpool then recognized the individual as a plainclothes officer wearing a bulletproof vest and a gun, but he did not know the

officer by name or command. PO Vanderpool exited his vehicle and the plainclothes officer handed § 87(2)(b) off to him. PO Vanderpool grabbed § 87(2)(b) told her to put her hands behind her back, and then handcuffed her. Once handcuffed, § 87(2)(b) began pulling away from PO Vanderpool and stiffening her body. § 87(2)(b) also attempted to headbutt PO Vanderpool and turn around to spit at him. PO Messina did not engage with § 87(2)(b) at any point in time.

PO Vanderpool dragged § 87(2)(b) by holding her handcuffs with his right hand and holding his left arm outstretched and stiff against her, so that his flat palm touched § 87(2)(b)'s back. PO Vanderpool placed § 87(2)(b) against the rear panel of the vehicle, between the rear door and the trunk on the driver's side. § 87(2)(b) attempted to bite and spit at PO Vanderpool. PO Vanderpool restrained § 87(2)(b) against the vehicle by pressing his elbow into the back of her neck, and by placing a knee into § 87(2)(b)'s buttock to prevent her from moving. PO Messina removed bags in the back seat of the vehicle and placed them in the trunk while PO Vanderpool restrained § 87(2)(b).

PO Vanderpool then opened the door, turned § 87(2)(b) around, and instructed her to sit down in the vehicle. § 87(2)(b) sat down with her back against the seat facing forward. When § 87(2)(b) sat down, she turned her legs at an angle towards the open door and kicked at PO Vanderpool twice. One kick contacted PO Vanderpool's chest and the second kick struck his groin area. The kicks did not cause injury or substantial pain to PO Vanderpool. PO Vanderpool jerked back because of the kicks, but he did not fall back or lose his balance. During this time, PO Messina was in the street walking around the vehicle. PO Vanderpool repeatedly told § 87(2)(b) to calm down and sit down in the police vehicle.

§ 87(2)(b) then tried to exit the police vehicle, lunging toward PO Vanderpool. § 87(2)(b) did not exit the vehicle, and PO Vanderpool further clarified she could not have done so, given the circumstances. PO Vanderpool then punched her once on the chin. PO Vanderpool did not issue any verbal warnings to § 87(2)(b) before striking her. § 87(2)(b) fell back so that she was sitting more upright, with her back against the seat. § 87(2)(b) did not lose consciousness and she did not appear to lose consciousness at any point. PO Vanderpool did not observe any visible injuries to § 87(2)(b) as a result of the strike. PO Vanderpool then slid § 87(2)(b)'s feet into the police vehicle, closed the door, and locked it.

In PO Messina's statement to the CCRB (Board Review 03), after PO Messina removed the bags in the back seat and placed them in the trunk, he returned to where PO Vanderpool was restraining § 87(2)(b) against the vehicle. PO Messina then opened the rear passenger door so that PO Vanderpool could place § 87(2)(b) inside. PO Messina held the door open while § 87(2)(b) began sitting down. § 87(2)(b) sat in a position such that her legs were extended towards the officers and the open passenger door. Both of § 87(2)(b)'s kicks struck PO Vanderpool in the groin area, and he did not react to the kicks in any physical manner. PO Messina did not recall if PO Vanderpool issued any commands to § 87(2)(b) prior to striking her.

Patrol Guide Procedure 221-01 (Board Review 04) states, "Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances." Subsection 2-C also states, "Members of the service shall not use any level of force on handcuffed or otherwise restrained subjects unless necessary to prevent injury, escape or to overcome active physical resistance or assault."

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 05).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 06).
- PO Jose Vanderpool has been a member-of-service for 12 years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- A FOIL request was sent to the New York City Comptroller's Office and as of the writing of this report, the office has not yet replied.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 07).
- § 87(2)(b)

[REDACTED]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date